

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

BEAUFORT DIVISION

Frank L. Scott, individually and on behalf)	
of others similarly situated,)	
)	Civil Action No.
Plaintiffs,)	
)	
vs.)	<u>DEFENDANT VANDERBILT</u>
)	<u>MORTGAGE AND FINANCE, INC.'S</u>
Vanderbilt Mortgage and Finance, Inc.,)	<u>MOTION TO DISMISS</u>
)	
Defendant.)	
_____)	

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Vanderbilt Mortgage and Finance, Inc. ("Vanderbilt") moves the Court for an Order dismissing Plaintiff's claims. This Motion is based on the ground that, pursuant to Rule 12(b)(6), Plaintiff's Complaint fails to state a claim upon which relief can be granted because, as a matter of law, the causes of action are defective in the following respects:

1. Plaintiff's claim is barred by res judicata because this same Plaintiff's claim that the notice of intended disposition of collateral was defective was dismissed with prejudice in *Scott v. Vanderbilt Mortgage and Finance, Inc.*, No. 3:07-0512, 2007 U.S. Dist. LEXIS 59202 (M.D. Tenn. Aug. 13, 2007);
2. S.C. Code Ann. 36-9-614(2) unambiguously states that "[a] particular phrasing of the notification is not required," contrary to Plaintiff's assertion that this provision requires "mandatory wording"; and
3. Plaintiff's assertion of legal conclusions, as opposed to allegations factually suggestive of plausible liability, is insufficient to state a claim for relief. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955 (2007).

This Motion is based on the applicable rules, case law, and contents of the Complaint, as well as the memorandum filed contemporaneously herewith.

I certify that this motion is exempt from the duty of consultation pursuant to Local Rule 7.02.

Respectfully submitted,

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September 25, 2007